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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, September 02, 2021
87th Legislature, Second Called Session, Number 18
The House convenes at 12:30 p.m.

Four bills are on the General State Calendar for second reading consideration today. The bills analyzed in today's *Daily Floor Report* are listed on the following page.

Analyses of all bills on second reading can be found online at TLIS, CapCentral, and the HRO website (<https://hro.house.texas.gov/BillAnalysis.aspx>).



Alma Allen
Chairman
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Thursday, September 02, 2021

87th Legislature, Second Called Session, Number 18

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SUBJECT:	Revising social studies curriculum, requiring civics training for educators
COMMITTEE:	Public Education — favorable, without amendment
VOTE:	7 ayes — Lozano, Allison, K. Bell, Buckley, Huberty, K. King, VanDeaver 5 nays — Dutton, Allen, Bernal, M. González, Talarico 1 absent — Meza
SENATE VOTE:	On final passage, August 11 — 18-11 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Powell, West, Whitmire, Zaffirini)
WITNESSES:	No public hearing.
BACKGROUND:	HB 3979 by Toth, enacted during the regular session of the 87th Legislature and effective September 1, adds requirements for certain topics to be included in the public school social studies curriculum. The bill prohibits requirements for teacher training on certain matters and prohibits grade or course credit from being awarded for certain activities.
DIGEST:	<p>SB 3 would revise requirements for civics and social studies curriculum and instruction. It would prohibit for all grades and courses inculcation in certain concepts and prohibit the awarding of credit for certain student activities. The bill would create a civics training program for teachers and administrators. Provisions added by HB 3979 during the regular session would be repealed.</p> <p>Social studies. The bill would require the State Board of Education (SBOE) to adopt essential knowledge and skills for the social studies curriculum for each grade level from kindergarten through grade 12 that develop each student's civic knowledge, including an understanding of:</p> <ul style="list-style-type: none">• the fundamental moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government;

- the history, qualities, traditions, and features of civic engagement in the United States;
- the structure, function, and processes of government institutions at the federal, state, and local levels; and
- the founding documents of the United States.

The essential knowledge and skills would have to develop each student's ability to:

- analyze and determine the reliability of information sources;
- formulate and articulate reasoned positions;
- understand the manner in which local, state, and federal government works and operates through the use of simulations and models of governmental and democratic processes;
- actively listen and engage in civil discourse, including discourse with those with different viewpoints; and
- participate as a citizen in a constitutional democracy by voting.

The essential knowledge and skills would have to develop each student's appreciation of:

- the importance and responsibility of participating in civic life;
- a commitment to the United States and its form of government, and
- a commitment to free speech and civil discourse.

The Texas Education Agency (TEA) would have to ensure that each district and charter school taught civics education as part of the district's social studies curriculum in a manner consistent with the bill's requirements. Nothing in the bill's curriculum requirements could be construed as limiting the teaching of or instruction in the essential knowledge and skills.

SBOE would have to review and revise, as needed, the essential knowledge and skills of the social studies curriculum not later than December 31, 2022.

Instructional requirements, prohibitions. SB 3 includes certain instructional requirements and prohibitions for any course or subject, including an innovative course, for a grade level from kindergarten through grade 12.

Current events. A teacher could not be compelled to discuss a particular current event or widely debated and currently controversial issue of public policy or social affairs. A teacher who chose to discuss such a topic would have to strive to explore that topic from diverse and contending perspectives without giving deference to any one perspective.

Student activities. A school district, charter school, or teacher could not require, make part of a course, or award a grade or course credit, including extra credit, for a student's:

- work for, affiliation with, or service learning in association with any organization engaged in lobbying for legislation at the federal, state, or local level, or in social policy advocacy or public policy advocacy;
- political activism, lobbying, or efforts to persuade members of the legislative or executive branch at the federal, state, or local level to take specific actions by direct communication; or
- participation in any internship, practicum, or similar activity involving social policy advocacy or public policy advocacy.

Those prohibitions would not apply to a student's participation in certain community charitable projects or an internship or practicum for which the student received course credit under the P-TECH program and that did not involve the student directly engaging in lobbying, social policy advocacy, or public policy advocacy.

Instructional prohibitions. A teacher, administrator, or other employee of a state agency, school district, or charter school could not require or make part of a course inculcation in the concept that:

- one race or sex is inherently superior to another race or sex;

- an individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- an individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race or sex;
- an individual's moral character, standing, or worth is necessarily determined by the individual's race or sex;
- an individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
- an individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of the individual's race or sex;
- meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race;
- the advent of slavery in the territory that is now the United States constituted the true founding of the United States; or
- with respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality.

A teacher, administrator, or other employee of a state agency, school district, or charter school could not teach, instruct, or train any administrator, teacher, or staff member of a state agency, school district, or charter school to adopt the listed concepts or require an understanding of the 1619 Project.

A school district or charter school could not implement, interpret, or enforce any rule in a manner that would result in the punishment of a student for discussing the concepts addressed in the bill or have a chilling effect on student discussions involving those concepts. Nothing in the bill's provisions could be construed as limiting the teaching of or instruction in the essential knowledge and skills.

Private funding. A state agency, school district, or charter school could not accept private funding for the purpose of developing a curriculum,

purchasing or selecting curriculum materials, or providing teacher training or professional development related to the bill's instructional requirements and prohibitions.

Instructional materials. Each school district and charter school that used a learning management system or any online learning portal to assign, distribute, present, or make available instructional materials to students would have to provide login credentials to the system or portal to each student's parent.

Civics training. To facilitate the teaching of curriculum consistent with the bill's requirements, the education commissioner would have to develop and make available civics training programs for teachers and administrators. The requirements of the civics training program would have to include training in:

- the essential knowledge and skills for the social studies curriculum related to the civic knowledge requirements of SB 3;
- guided classroom discussion of current events, as appropriate for the grade level and consistent with the bill's restrictions on prohibited concepts;
- classroom simulations and models of governmental and democratic processes consistent with the requirements and restrictions in the bill;
- media literacy, including instruction on verifying information and sources, identifying and responding to logical fallacies, and identifying propaganda, as appropriate for the grade level and consistent with the bill's restrictions; and
- strategies for incorporating civics instruction into subject areas other than social studies.

The education commissioner by rule would have to establish the grade levels at which a teacher provided instruction to be eligible to participate in a civics training program. The program would have to be reviewed annually and approved by SBOE. Each school district and charter school would have to have at least one teacher and one principal or campus instructional leader who had attended a civics training program. TEA

would have to provide assistance in complying with the training requirement. A teacher could receive a stipend for the training.

The commissioner could delay implementation of the training requirements to a school year not later than the 2025-2026 school year if the revision of the essential knowledge and skills for the social studies curriculum or the availability of civics training programs did not occur in a manner that reasonably afforded public schools the ability to comply with the training by an earlier school year.

Nothing in the training program requirements could be construed as limiting the teaching of or instruction in the essential knowledge and skills.

The bill would apply beginning with the 2022-2023 school year. It includes a severability clause stating that if any provision of the bill or its application to any person or circumstance were held invalid, the invalidity would not affect other provisions or applications that could be given effect without the invalid provision or application.

The bill would take effect on the first day that occurred after August 31, 2021, and is on or after the earliest date on which it could take effect, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the legislative session.

**SUPPORTERS
SAY:**

SB 3 would improve the teaching of civics and social studies in public schools by focusing lessons on the moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government. This would give students a strong and balanced foundation to understand history and navigate current events. The bill also would improve students' ability to evaluate complex issues and sources of information by better training educators to facilitate classroom discussions, and it would prevent certain kinds of instruction on divisive concepts.

Classroom discussions. The bill would create a needed civics training program for educators to help them guide appropriate classroom discussions of current events and instruct students on media literacy. It

would prohibit inculcation in certain divisive concepts under an academic framework known as "critical race theory." SB 3 would ensure that students in Texas public schools learned the good and bad of American history while understanding that their future is not determined by the color of their skin.

Social studies. The bill would improve on HB 3979 by Toth, which passed during the regular session, by replacing a lengthy list of required teachings about American and Texas history with a broad framework of curriculum requirements. It would leave specific details about the social studies curriculum to the State Board of Education, which has a longstanding process for revising the Texas Essential Knowledge and Skills with input from educators and the public.

While some say SB 3 would remove important instructional requirements that were included in HB 3979, many of those topics are included in the current social studies curriculum and are likely to remain so in the revised curriculum. The bill simply would ensure that students examined issues such as slavery and segregation as contradictions of America's founding principles of liberty and equality and learn how the nation has advanced toward more equitable treatment of all groups in the United States.

Instructional prohibitions. SB 3 would apply to all courses in kindergarten through grade 12 the prohibition on inculcation of certain concepts. This would prevent teachers at any grade level or any subject from advancing a false narrative that America is a hopelessly racist society. This narrative can have negative effects on all students, who may feel distress or feel the role of oppressor or victim being imposed upon them based on their race. Instead of dividing students on this basis, SB 3 would help foster their unity as Americans dedicated to a democracy founded on a vision of liberty and equality.

The bill would not prevent teaching about racial discrimination, slavery, or segregation. It would, however, prevent teaching that could contribute to racial disharmony, such as the notion that one race is inherently superior to another or that an individual bears responsibility for past actions by other members of the same race or sex.

Student activities. The bill would ensure that educators did not push a political ideology or require student involvement with organizations that promote specific public policy advocacy by awarding students credit for certain activities. Young Texans would still be able to visit the Capitol and be engaged with public policy on their own initiative. This would ensure that a student's engagement on public policy appropriately was made in conjunction with the student's family. Students still could engage in nonpartisan, community-based projects as part of their classes.

Civics training. The bill would create a civics training program for public school teachers and administrators to improve instruction on the social studies curriculum, similar to programs to improve math and reading instruction through subject-specific training academies. This training would ensure that teachers could engage their students in classroom discussions that were appropriate for the grade level and consistent with the bill's requirements and prohibitions.

CRITICS
SAY:

SB 3 is unnecessary legislation that could have a chilling effect on important classroom discussions about current and historical events. There is little evidence of teachers bringing the college-level concept of "critical race theory" to the state's K-12 classrooms, but the bill could hamper the efforts of educators to teach public school students, including those from diverse backgrounds, to critically weigh multiple perspectives.

Classroom discussions. By limiting teachers' ability to discuss the nation's history of racial oppression, the bill could restrict discussion by students and teachers of the impact of past and current events on their lives and communities. Such instruction, while potentially uncomfortable for some students, could lead to broader understanding of the lingering effects of past actions and how to better address those effects in the current day.

A teacher could feel inhibited in discussing a current event or controversial public policy issue because of the bill's requirement that the teacher explore multiple perspectives without giving deference to any one perspective, making it unnecessarily difficult to discuss certain events, such as those that may stem from racial conflict. The bill could deprive Texas students and teachers of the confidence to have critical

conversations in the classroom and could leave students less prepared for college studies.

Social studies. By not requiring in statute that students study certain historically underrepresented individuals, the bill would miss an opportunity to encourage students to understand their shared place in America, particularly students from those historically underrepresented groups who comprise the majority of students in Texas.

Instructional prohibitions. The broad topics that would be prohibited by SB 3 include those that are part of standard diversity, equity, and inclusion training in schools, businesses, and government entities, and prohibiting such discussion in the classroom could shut down important conversations about history and current events. SB 3 could give students the false impression that racial discrimination and white supremacy were limited to historical events such as slavery and the Ku Klux Klan, rather than acknowledging that their legacy exists today and that students should be educationally prepared to grapple with it.

Student activities. The bill could limit enriching student activities related to political activism, even as those activities have been shown to prepare students to become informed and active citizens.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about \$14.6 million to general revenue through fiscal 2023. HB 5 by Bonnen, which was passed by the House on second reading on Sept. 1, would appropriate \$14.6 million in general revenue to the Texas Education Agency for fiscal 2022-23 to implement certain instructional requirements and prohibitions, contingent on enactment of SB 3 or similar legislation.

SUBJECT: Authorizing school instruction to prevent child abuse, dating violence

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, M. González, Huberty, K. King, Talarico, VanDeaver

0 nays

1 absent — Meza

SENATE VOTE: On final passage, August 10 — 29-0

WITNESSES: For — Mandi Kimball, Children at Risk; Claudia Ovalles; (*Registered, but did not testify*: Kevin Stewart, American Association of University Women of Texas; Monty Exter, ATPE; Julia Grizzard, Bexar County Education Coalition and San Antonio ISD; Christine Wright, City of San Antonio; Jennifer Toon, Coalition of Texans with Disabilities; Deirdre Walsh, IGC; Jacquelyn Padgett, In Good Company; Matthew Lovitt, National Alliance on Mental Illness Texas; Lukas McKenzie, Sigma Alpha Epsilon, Freemasons of Northern Nevada Lake Tahoe; Dena Donaldson, Texas American Federation of Teachers; Lonnie Hollingsworth, Texas Classroom Teachers Association; and 23 individuals)

Against — Cindi Castilla and Karole Fedrick, Texas Eagle Forum; James Buntrock, Texas Pastor Council, Glorious Way Church; Deborah Kelting, Texas Republican Party; Destiny Hallman; Teresa Thomas; (*Registered, but did not testify*: Gordy Carmona, Stripes of Pride; Tom Holman; Emilie Kopp; Craig Licciardi; Tom Nobis; Judah Rice)

On — Julie Pickren; (*Registered, but did not testify*: Eric Marin and Monica Martinez, Texas Education Agency)

BACKGROUND: Education Code sec. 28.004 establishes local school health advisory councils to assist the district in ensuring that local community values are reflected in the district's health education curriculum.

DIGEST: CSSB 9 would add to the duties of a school district's local school health advisory council (SHAC) to include recommending appropriate grade levels and curriculum for instruction on child abuse, family violence, and dating violence. The bill would be known as the Christine Blubaugh Act.

Instructional materials. A school district would have to make all curriculum materials used for instruction relating to the prevention of child abuse, family violence, and dating violence available to parents under existing statutory provisions that allow parents to review materials. If a district purchased copyrighted curriculum materials for use in the instruction, it would have to ensure that the purchase agreement provided a means by which a parent could purchase a copy of the materials from the publisher at a price that did not exceed the price per unit paid by the district for the materials.

School board duties. A district's board of trustees would have to select the course materials and instruction relating to the prevention of child abuse, family violence, and dating violence with the advice of its local SHAC. The board would have to adopt a policy establishing a process to adopt the curriculum materials that required:

- the board to adopt a resolution convening the SHAC for the purpose of making recommendations on the curriculum materials;
- the SHAC to hold at least two public meetings on the curriculum materials before adopting recommendations and provide the recommendations to the board at a public meeting of the board; and
- the board, after receipt of the SHAC recommendations, to take action on the adoption of the recommendations by a record vote at a public meeting.

Before adopting curriculum materials for the instruction, the board would have to ensure that the materials were based on the advice of the SHAC, suitable for the intended subject and grade level, and had been reviewed by academic experts in the intended subject and grade level. The board would have to determine the specific content of the instruction.

Parental notice. Before each school year, a district would have to provide written notice to a parent of each student of the board's decision on

whether the district would provide the instruction. If instruction was to be provided, the notice would have to include a statement informing the parent of the requirements under state law regarding the instruction and a detailed description of the content of the instruction.

The notice would have to include a statement of the parent's right to:

- review or purchase a copy of the curriculum materials;
- remove the student from any part of the instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and
- use the statutory grievance procedure or appeals process for appeals of school board actions to the education commissioner.

The notice also would have to include a statement that any curriculum materials in the public domain used for the instruction had to be posted on the district's website address at which the curriculum materials were located, and information describing the opportunities for parental involvement in the development of the curriculum to be used in the instruction, including information on the local SHAC.

A district would have to obtain the written consent of a student's parent before providing the instruction. The written consent could not be included with any other notification or request for written consent provided to the parent and would have to be provided to the parent not later than the 14th day before the date on which the instruction began.

Dating violence policy. CSSB 9 would add to the requirements in the Education Code on a school district's dating violence policy. The policy would have to include a clear statement that dating violence was not tolerated at school and the reporting procedures and guidelines for students who were victims of dating violence. To the extent possible, a school district would have to make available to students age-appropriate educational materials that included information on the dangers of dating violence and resources to students seeking help.

The bill would apply beginning with the 2022-2023 school year. Requirements related to the purchase of copyrighted curriculum materials would apply only to a purchase agreement entered into, amended, or renewed on or after the bill's effective date.

The bill would take effect on the first day that occurred after August 31, 2021, and is on or after the earliest date on which it could take effect, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the legislative session.

**SUPPORTERS
SAY:**

CSSB 9 would promote student safety by establishing guidelines for a school district that opted to provide instruction on the prevention of child abuse, family violence, and dating violence. The bill would ensure that instruction on these important but sensitive topics was developed in conjunction with district School Health Advisory Councils, which are designed to reflect local community values on health-related topics. It would facilitate the development of instruction on these topics with public input and provide the opportunity for parental involvement in the process of developing the curriculum and adopting instructional materials.

CSSB 9 would require schools to provide more information to and reporting procedures for students who were victims of dating violence, as teens experiencing their first dating experiences may not recognize abusive behavior. The bill would be named after Christine Blubaugh, a 16-year-old girl from Grand Prairie who was murdered by her ex-boyfriend in 2000.

The bill is similar to SB 1109 by West, enacted during the 87th Legislature's regular session but vetoed by the governor because it failed to recognize the right of parents to opt their children out of the instruction. CSSB 9 would address these concerns by requiring parental notice and consent before a student could receive the instruction.

While the bill would not require a district to provide the abuse and violence prevention instruction in middle and high school as the Senate-passed version did, it would authorize the instruction for districts that chose to provide it. The bill would not leave students less protected

because teachers already are required by state law to report suspected child abuse.

CRITICS
SAY:

CSSB 9 could lead to important instruction in public schools about child abuse, family violence, and dating violence, but some of its provisions could fail to protect the most vulnerable children. The bill should require the instruction to be provided at least once in middle school and once in high school as the Senate-passed version of the bill did.

Requiring parents to provide written consent for the instruction, rather than requiring them to sign a form opting their child out of the instruction, could put some children at risk. The reality of child abuse and family violence is that parents who engage in abusive behavior or who are experiencing abuse in the home may be less likely to want a child exposed to details about behavior that could constitute abuse.

SUBJECT: Revising accelerated instruction requirements for certain students

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, Talarico, VanDeaver

0 nays

2 absent — M. González, Meza

WITNESSES: For — Ryder Warren, Northwest ISD; Tori Austin, San Antonio ISD and Bexar County Education Coalition; Kristin McGuire, Texas Council of Administrators of Special Education; Steven Price, The V.O.I.C.E.S of Our Veterans and The Voices Foundation; (*Registered, but did not testify:* Julia Grizzard, Bexar County Education Coalition; Charles Gaines, Raise Your Hand Texas; Grover Campbell, TASB; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Mark Terry, Texas Elementary Principals and Supervisors Association; Michelle Wittenburg, Texas Public Charter Schools Association; Dee Carney, Texas School Alliance; Christy Rome, Texas School Coalition; Chase McMichael; Tina Myers; Thomas Parkinson; Liza Webb-McMichael)

Against — (*Registered, but did not testify:* Madison Yandell, Texas 2036; Katherine Kelton)

On — Kate Greer, Commit Partnership; (*Registered, but did not testify:* Heather Sheffield, Texans Advocating for Meaningful Student Assessment; Eric Marin, Von Byer, and Lizette Ridgeway, Texas Education Agency; Tera Burns; Melinda Preston)

BACKGROUND: Texas requires annual state exams in reading and math for students in grades 3 through 8, in writing for students in grades 4 and 7, in science for students in grades 5 and 8, and in social studies for students in grade 8.

HB 4545 by Dutton, enacted by the 87th Legislature and effective June 16, 2021, establishes requirements for school districts to provide accelerated learning and form an accelerated learning committee for certain students who fail a STAAR exam.

DIGEST: CSHB 233 would require school districts to provide accelerated learning to a student in grades 3 through 8 who failed a math or reading exam, rather than to a student who failed any required state exam.

The bill would change from three to four the maximum size of a student group for purposes of providing required supplemental instruction, unless the parent or guardian of each student in the group authorized a larger group. For the 2021-2022 school year, the board of trustees of a school district could adopt a resolution authorizing supplemental instruction to be provided in a group of no more than 10 students without authorization from the parent or guardian of each student in the group. The provision for the 2021-2022 school year would expire September 1, 2022.

The bill would change the condition that triggered a requirement for a district superintendent or the superintendent's designee to meet with a student's accelerated learning committee. The superintendent or designee would have to meet with the committee if a student failed on two consecutive attempts to perform satisfactorily on an exam instead of when a student failed an exam in the subsequent school year.

The education commissioner could waive requirements for accelerated learning committees and accelerated instruction for a school district for each school year in which at least 60 percent of the students who received accelerated instruction during the school year preceding the previous school year performed satisfactorily in the subsequent school year on the exam in each subject in which the student previously failed to perform satisfactorily. By the beginning of each school year, the commissioner would have to publish a list of school districts that qualified for a waiver.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the legislative session.

**SUPPORTERS
SAY:**

CSHB 233 would address staffing and other concerns about recently enacted requirements for accelerated learning practices to help students pass their STAAR exams. The bill would require accelerated instruction only for students in grades 3 through 8 who failed to perform satisfactorily on a STAAR reading or math exam. Addressing deficits in reading comprehension likely would help students improve achievement on their STAAR science or social studies tests.

While well intentioned, requirements that tutoring be provided in groups of no more than three students has become difficult to implement at a time when the COVID-19 pandemic has caused shortages of classroom teachers. The bill would recognize current staffing issues by allowing a student-to-teacher ratio of 10 to 1 for the 2021-2022 school year and then lowering the ratio to 4 to 1 for subsequent school years.

The bill would provide more time for districts to provide targeted instruction for a student struggling in a particular subject area by clarifying that accelerated learning committees would have to meet only after two consecutive unsatisfactory attempts by a student to pass an exam.

Some districts may have experienced higher failure rates on STAAR exams during the 2020-2021 school year due to remote learning and other pandemic-related disruptions. CSHB 233 would allow districts that showed significant success in bringing these students back up to a satisfactory level in the following year to seek a waiver from requirements to conduct the extra instruction.

**CRITICS
SAY:**

CSHB 233 would increase student-teacher ratios for accelerated instruction above best-practice levels for the current school year at a time when small group tutoring is urgently needed to help students recover from pandemic-related learning losses. In a small group, a teacher has more time to work with individual students, which is especially effective for students living in poverty.

SUBJECT: Prohibiting high-level radioactive waste in certain areas

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Landgraf, Dominguez, Dean, Kacal, Kuempel, Morrison
2 nays — Goodwin, Morales Shaw
1 absent — Reynolds

WITNESSES: No public hearing.

BACKGROUND: Health and Safety Code sec. 401.202 allows the Texas Commission on Environmental Quality to grant one license to a facility for the disposal of low-level radioactive waste.

Under 42 U.S.C. sec. 10101, the term "high-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations and other highly radioactive material that the Nuclear Regulatory Commission determines by rule requires permanent isolation. "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

DIGEST: HB 200 would prohibit a person from importing into, disposing of, or storing high-level radioactive waste in an area of the state designated as a critical energy infrastructure zone by the Texas Commission on Environmental Quality (TCEQ). "High-level radioactive waste" would have the meaning assigned by federal law (42 U.S.C. sec. 10101) and would include spent nuclear fuel.

The bill would require TCEQ to establish criteria and procedures for designating areas where oil and gas activities or other energy-related activities occurred as critical energy infrastructure zones. In establishing

the criteria and procedures, TCEQ would have to consider establishing critical energy infrastructure zones in counties with more than:

- 100 megawatts of installed solar energy generation capacity;
- 100 megawatts of installed wind energy generation capacity;
- 10 million barrels of oil produced annually; or
- 2 million MCF of natural gas produced annually.

The designation of a critical energy infrastructure zone would remain in effect until TCEQ revoked the designation under procedures adopted by the commission. TCEQ could amend the boundaries of a critical energy infrastructure zone.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

**SUPPORTERS
SAY:**

HB 200 would enact the will of Texas residents by banning the importation, storage, and disposal of dangerous high-level radioactive waste in certain areas of the state. The state has a single low-level radioactive waste disposal facility in Andrews County, which benefits from jobs and other economic activity generated by the facility. However, the federal Nuclear Regulatory Commission (NRC) currently is evaluating an application that would authorize the storage of spent nuclear fuel, or high-level radioactive waste, in the county. This could jeopardize public health and safety and the environment of the area. Any release of high-level radioactive materials would contaminate the low-level facility and lead to lost revenues for both the county and the state.

By prohibiting high-level radioactive waste in areas designated by the Texas Commission on Environmental Quality (TCEQ) as critical energy infrastructure zones, HB 200 would support the residents of Andrews County, where the commissioners court unanimously passed a resolution expressing opposition to the storage of such waste. TCEQ could designate those zones in areas where oil and gas activities or other energy-related activities, such as solar or wind generation, occurred. This would protect not only Andrews county, but also other areas of the state through which high-level radioactive waste could be transported. The bill would be

narrowly tailored so that the prohibition applied only in certain areas, rather than statewide, to withstand any potential legal challenges to its effects on interstate commerce. HB 200 would work in combination with HB 7 by Landgraf, a bill passed by the House on August 30 that would establish a broader ban on the transportation, storage, or disposal of high-level radioactive waste.

Those claiming a high-level radioactive waste facility would be safe and secure have not considered all the possible impacts. NRC has conducted an environmental impact study regarding the proposed facility, but no study has been done to show the potential impact of storing high-level radioactive waste on oil and gas operations in the Permian Basin, one of the largest producing oilfields in the world. It is in the best interest of the state to protect the Permian Basin, which employs thousands of Texans and generates billions of dollars for the state, including transportation and education funds. Such a facility could make the area a target for terrorism and threaten this significant energy resource.

While some have made calls to also ban the importation, storage, and disposal of greater-than-class C (GTCC) waste, that type is considered to be low-level radioactive waste and often is generated by oil and gas production activities. GTCC waste already has been stored in the low-level waste facility in Andrews County for years and helps drive economic activity. Stakeholders may continue to discuss which levels of waste are appropriate to be stored in the state, but it is imperative that HB 200 be enacted quickly to prevent NRC from licensing a high-level radioactive waste facility in Andrews County. The bill also must fall within the governor's call for the special session, which only references high-level radioactive waste.

CRITICS
SAY:

The Legislature should not limit the storage of radioactive waste in Andrews County. The Nuclear Regulatory Commission (NRC) will ensure that any proposed high-level radioactive waste interim storage facility would be approved based on its merits. The nation would benefit from a centrally located interim storage facility in Texas, and such a facility also would be advantageous to Texans by bringing jobs and industry to the community. There is no reason to think a federally approved facility would not store spent nuclear fuel rods in a safe manner,

as there have not been issues with storing this kind of waste in existing facilities. Significant time and money has been spent to ensure that a Texas facility would meet all safety standards for the public, workers, and the environment. NRC released an environmental impact report concluding that the proposed interim storage facility would not have a long-term impact to the land resources in the area.

OTHER
CRITICS
SAY:

HB 200 would not go far enough to ban high-level radioactive waste in the state. It should prohibit the transportation, disposal, and storage of greater-than-class C (GTCC) waste. While it may not meet the legal definition of high-level radioactive waste, GTCC waste is as dangerous and its storage in the state could increase risks to Texas residents and the environment. Certain provisions of the bill also should be clarified to prevent loopholes. It should be clear that the ban on high-level waste applied to all private and public entities and prevent facilities from submitting a partial application to avoid the ban. The bill also should have stronger enforcement measures, such as specific fines and penalties.